

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

RENAE MARIE ALLEN,

Plaintiff-Appellee,

V

JAMES C. ALLEN,

Defendant-Appellant.

---

UNPUBLISHED  
September 30, 2003

No. 240427  
Wayne Circuit Court  
LC No. 00-007687-DM

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order regarding custody, support, and parenting time. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced pursuant to a judgment entered in January 2001. The judgment granted both parties joint legal custody of the children “with the issue of physical custody to be referred to the Wayne County Friend of the Court for investigation.” In the interim, plaintiff was awarded physical custody on a temporary basis until further order of the court. The Friend of the Court later recommended joint legal and physical custody. The court denied defendant’s motion to adopt the recommendation with modifications and entered an order awarding plaintiff sole physical custody with parenting time to defendant.

In child custody cases, the court’s choice, interpretation, and application of the law is reviewed for clear legal error. Its findings of fact are reviewed under the great weight of the evidence standard. Its discretionary rulings, including a determination on the issue of custody, is reviewed for an abuse of discretion. *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001). For this Court to carry out its function, “there must be an evidentiary record.” *Stringer v Vincent*, 161 Mich App 429, 433; 411 NW2d 474 (1987).

In a child custody dispute, the court must “establish the rights and duties as to the child’s custody, support, and parenting time in accordance with” the Child Custody Act. MCL 722.24(1). In resolving the dispute, the court may award custody to one or more of the parties and provide reasonable parenting time according to the best interests of the child. MCL 722.27(1)(a), (b); MCL 722.27a(1). However, the court cannot modify a previous judgment or order or enter a new order changing the child’s established custodial environment “unless there is presented clear and convincing evidence that it is in the best interests of the child.” MCL

722.27(1)(c). Even in an original custody determination, the court must consider whether an established custodial environment exists by virtue of temporary custody orders or a parenting arrangement agreed to by the parties. An established custodial environment can exist in more than one home. *Jack v Jack*, 239 Mich App 668, 670-671; 610 NW2d 231 (2000); *Bowers v Bowers*, 190 Mich App 51, 53-54; 475 NW2d 394 (1991).

To determine the child's best interests, the court is to consider, evaluate, and determine the factors set forth in § 3 of the Act. MCL 722.23. If a party requests joint custody, the court must determine whether it is in the child's best interests by considering the best interest factors in § 3 and whether the parents can cooperate and generally agree regarding the upbringing of the child. MCL 722.26a(1). "When a trial court fails to consider custody issues in accordance with the mandates set forth in MCL 722.23 'and make reviewable findings of fact, the proper remedy is to remand for a new child custody hearing.' " *Foskett, supra* at 12 (citations omitted).

The trial court awarded plaintiff sole physical custody without first determining whether an established custodial environment existed with either or both parties. The trial court also rejected joint custody without considering the children's best interests or the parties' ability to cooperate or making findings of fact as required by MCL 722.26(a)(1) and MCR 3.210(D). We therefore remand for an evidentiary hearing for resolution of these issues.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder